

Allocation Hearing Exhibit 1056

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1 A-F-T-E-R-N-O-O-N S-E-S-I-O-N

2 (12:55 p.m.)

3 CHAIRMAN AGUERO: Good afternoon to

4 everyone. I hope that we have had a good lunch, and

5 we will continue with Mr. Robert Wussler.

6 Welcome, Mr. Wussler, to the tribunal.

7 MR. WUSSLER: Thank you very much.

8 WHEREUPON,

9 ROBERT J. WUSSLER

10 was called as a witness and, having first been duly

11 sworn, assumed the witness stand, was examined and

12 testified as follows:

13 MR. GARRETT: Thank you, Mr. Aguero.

14 DIRECT EXAMINATION

15 BY MR. GARRETT:

16 Q Mr. Wussler, for the record, would you

17 state your name and position and business address,

18 please.

19 A Robert J. Wussler. I am President and

20 Chief Executive Officer of COMSAT Video Enterprises,

21 a wholly-owned subsidiary of the Communications

22 Satellite Corporation. My business address is 930

23 L'Enfant Plaza, Washington, D.C.

24 Q Mr. Wussler, you have been the President

25 and Chief Executive Officer of COMSAT Video since

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1 September of 1989. Is that correct?

2 A That is correct. The last two years.

3 Q Could you describe briefly the business

4 in which COMSAT Video Enterprises is engaged?

5 A Yes. We are -- we are the largest

6 provider of satellite delivered signals, to hotels

7 across the country. We presently handle 1,700 hotels,

8 over 300,000 hotel rooms, in which we provide certain

9 free-to-the-guest services -- Showtime, a premium

10 cable channel motion picture service; WTBS; CNN

11 Headline News, and ESPN; along with four pay-per-view

12 movie channels.

13 We provide an early window of opportunity

14 of providing motion pictures to hotel clientele across

15 the country. We charge for each movie on a pay-per-

16 view basis.

17 We are also in the business of providing

18 video conferencing services to The Seine and other

19 hotels. We are involved in the distribution of

20 programming in Eastern Europe and other locations.

21 And we own the Denver Nuggets of the National

22 Basketball Association.

23 Q Okay. Let me have you focus on the years

24 1980 through '89, Mr. Wussler. During that period,

25 you were employed by Turner Broadcasting, were you

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1 not?

2 A That's correct.

3 Q Could you describe the positions that you

4 held with Turner Broadcasting?

5 A Yes. I joined Ted Turner's operation,

6 Turner Broadcasting System, in the first quarter of

7 1980 as Executive Vice President of the corporation.

8 Some year and a half later, I was also appointed

9 simultaneously President of Superstation WTBS. Both

10 of those positions I held until the late 1980's when

11 I was appointed Senior Executive Vice President of the

12 corporation, a job that I held until I departed Turner

13 Broadcasting System in August of 1989 when I joined

14 COMSAT.

15 I was responsible for the marketing-cable

16 relations, programming, sales, other administrative

17 duties, and also handled a number of special projects

18 for Mr. Turner on his channels directly.

19 Q Would you briefly describe the various

20 types of business in which Turner Broadcasting was

21 engaged during this period?

22 A Yes. Turner Broadcasting originally

23 started as an outdoor billboard company in the late

24 60's and early 70's. Mr. Turner experimented with

25 radio station ownership in the late 60's and early

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1 70's, and then settled into the ownership of UHF

2 television stations in the mid 1970.s.

3 Starting in the fall of 1976, he fed his

4 independent UHF television station that was

5 headquartered in Atlanta, Georgia, to the satellite

6 for retransmission via cable operators around the

7 country. As such, other than ABC, CBS, NBC, Public

8 Broadcasting, and an occasional local independent

9 television station.

10 Mr. Turner was the second organization to

11 provide unique programming to the cable industry.

12 HBO, a wholly-owned subsidiary of Time, Inc., now

13 Time-Warner Incorporated, was put up on the satellite

14 in the fall of 1975, and it was HBO and Mr. Turner's

15 superstation that began to drive cable penetration

16 during the latter part of the 70's.

17 On June 1, 1980, we started Cable News

18 Network, now known primarily as CNN. That was joined

19 a year and a half later by CNN 2, now known as

20 Headline News. A third channel, TNT, was added in

21 October of 1988, some three years ago, approximately

22 a year before my departure from the company.

23 The company also provides syndication

24 services, both domestically and internationally. The

25 bulk of that programming comes from the MGM United

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1 Artists Library that **was** purchased by the company in

2 1985 with other 3,500 motion picture and television

3 titles in its *library*.

4 Q All right. And Turner Broadcasting also

5 has ownership interest in the Atlanta Braves and

6 Atlanta Hawks?

7 A Yes. The Atlanta Braves are wholly owned,

8 and the Atlanta Hawks are controlled through a limited

9 partnership investment.

10 Q Okay.

11 A The company is also involved in a number

12 of other operations, book publishing, music

13 publishing, security services, that stem from its

14 ownership of property in the Atlanta, Georgia, area

15 and other locations.

16 Q Mr. Wussler, as part of your

17 responsibilities with Turner Broadcasting, are you

18 generally familiar with the operations of other

19 program services with which WTBS competed?

20 A Yes. I would say that I would be familiar

21 with WGN, the tribune broadcasting company owned super

22 station in Chicago; WWOR in New York and in New

23 Jersey; and the other basic cable programming

24 organizations that had become household names.

25 Q Services such as ESPN?

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1 A USA, The Weather Channel, Discovery.

2 Q You are generally familiar with all of

3 those different operations?

4 A Yee, I am.

5 Q Thank you. I direct your attention to the

6 top of page 2 of your written testimony, Mr. Wussler.

7 You briefly describe your work experience prior to

8 joining TBS in the late 70's. Could you briefly

9 summarize that work experience?

10 A Yes. I spent 21 years at CBS, previously

11 known as the Columbia Broadcasting System, where I

12 started in the mailroom in 1957, spent 15 years as a

13 television producer from 1957 to 1972, working with

14 CBS News, then went on into the General Management

15 category, ran the CBS owned and operated television

16 station in Chicago from 1972 to 1974, was Vice

17 President and General Manager of CBS Sports in 1974

18 and 1975; was President of CBS Television, 1975 to

19 1977. And when the CBS Sports organization was made

20 into a division, I became its first President in 1977.

21 Q Mr. Wussler, I assume that in your

22 positions with Turner Broadcasting you had a

23 considerable amount of contact with the cable

24 television industry. Is that correct?

25 A Yes, it **is**.

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1 Q Could you briefly describe the nature of

2 that contact?

3 A Well, the contact would be with both

4 advertising organizations, advertising fraternities,

5 the Cable Advertising Bureau, which was a cooperative

6 setup by the cable industry as a trade association in

7 order to foster the idea of clients and advertising

8 agencies, on coming into the cable industry, and in

9 spending some of their available dollars on inventory

10 in that industry.

11 I also worked very closely with

12 programming organizations, both in Hollywood and in

13 New York, in acquiring syndicated programming, motion

14 pictures, and sports, dealing very closely with the

15 various major sports organizations headquartered in

16 New York, Chicago, Shawnee Mission, Kansas, and the

17 other sports capitals of America and the world.

18 Q Mr. Wussler, again directing your

19 attention to the top of page 2 of your testimony, you

20 identified a number of the industry organizations in

21 which you have been active. Do you see that?

22 A Yes.

23 Q Could you just explain for the record here

24 the various organizations to which you refer?

25 A Certainly. I have been -- I have served

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1 as -- three times in the past as Past Chairman of the

2 National Academy of Television Arts and Sciences, a

3 15,000-person organization with chapters in 20 cities

4 around the United States, which fosters higher

5 standards on the part of television programmers and

6 television technology.

7 I was also instrumental in the start of

8 the National Academy -- the National Cable Television

9 Association, which serves in a similar function for

10 the cable-originated programming.

11 I've also been involved with the National

12 Satellite Network Committee, and I was Chairman of the

13 NCTA Programming Conference that was held on a number

14 of occasions in large cities around the United States.

15 I've been a member of the Board of Governors of the

16 National Academy of Cable Programming, the Board of

17 Advisors of Cable Television Public Affairs

18 Association, the parent organization of C-TAM, and the

19 Executive Committee of the Cable Television

20 Advertising Bureau.

21 Q You mentioned you received a couple of

22 awards from the National Cable Television Association,

23 the President's Award and the Associate's Award. What

24 was the basis of those awards?

25 A Those were for outstanding service to the

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1 cable industry in devising programming and in

2 representing the organization, both *here* in Washington

3 and in Hollywood, on industry matters. I am also the

4 recipient of five national Emmy awards for service to

5 the broadcasting industry.

6 MR. GARRETT: Mr. Chairman, I'll make the

7 witness available for voir dire at this point.

8 CHAIRMAN AGUERO: Mr. Lane?

9 MR. LANE: No questions.

10 CHAIRMAN AGUERO: Mr. Koenigsberg?

11 MR. KOENIGSBERG: No questions, Mr.

12 Chairman. Thank you.

13 CHAIRMAN AGUERO: NAB?

14 MR. STEWART: No questions.

15 CHAIRMAN AGUERO: PBS?

16 MR. OLSON: No questions, Mr. Chairman.

17 CHAIRMAN AGUERO: Thank you, sir. You may

18 continue.

19 BY MR. GARRETT:

20 Q Mr. Wussler, let me ask you very briefly

21 at the outset to summarize the purpose of your

22 appearing here today on behalf of the Joint Sports

23 Claimants.

24 A Well, I think it's appropriate for me to

25 offer to the CRT opinions concerning the relative

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2 value of sports, motion pictures, and other syndicated

3 programming on superstations and other distant signal-

4 delivered programming that has gone on in the cable

5 industry, and I plan to offer to anyone who wishes to

6 listen my thoughts on the relationship of MPAA concept

7 of the viewing hours to programming values.

8 Q What is your understanding of that MPAA

9 concept of viewing hours?

10 A Well, I believe that it is simply the

11 number of people who look times the number of hours

12 that they look at it. I think it is a fairly

13 straightforward, albeit somewhat simplistic,

14 straightforward view of trying to multiply a factor

15 number.

16 Q Would you briefly summarize for the

17 tribunal's benefit the opinions that you hold on the

18 issues you just identified?

19 A Well, I think that the 4 to 1 disparity

20 in CRT awards is not consistent with the value that

21 cable operators place on the sports programming, the

22 distance -- that distant signals deliver to both the

23 cable operator and then to their retail customers, the

24 home viewer.

25 I also think that sports and movies are

most valuable and that syndicated programming is

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1 several notches down that rung, and that program

2 values are probably not related to viewing hours or

3 the amount of time that programs occupy. You can put

4 on hours and hours and hours of music programming or

5 Andy Griffith and it's not going to account for 15

6 minutes of a pennant-riding baseball game.

7 Q Mr. Wussler, I direct your attention to

8 your written testimony, down at the bottom of page 2.

9 CHAIRMAN AGUERO: Why are we using Andy

10 Griffith?

11 (Laughter.)

12 Can we choose another show?

13 (Laughter.)

14 THE WITNESS: With your permission, sir,

15 may I use *Beverly Hillbillies*?

16 (Laughter.)

17 COMMISSIONER ARGETSINGER: The

18 Commissioner likes *Flintstones*.

19 CHAIRMAN AGUERO: I love it.

20 MR. GARRETT: I'm sorry to hear that.

21 (Laughter.)

22 CHAIRMAN AGUERO: You have read my mind.

23 I love it.

24 THE WITNESS: Turner Broadcasting is in

25 the process of purchasing *Hanna Barbera*, so you'll

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1 probably be seeing more *Flintstones*.

2 CHAIRMAN AGUERO: Thanks very much.

3 MR. GARRETT: We'll focus on the *Beverly*

4 *Hillbillies* from here on in.

5 BY MR. GARRETT:

6 The -- at the bottom of your testimony on

7 page 2, Mr. Wussler, you talk about some of the

8 factors that distinguish sports on the one hand from

9 movies and -- and syndicated programming. I wonder

10 if you could just briefly explain what you mean by

11 those various terms there.

12 A Certainly. Sports is -- there's a

13 uniqueness to sports. Not that the Washington

14 Redskins are carried on a superstation, but you can

15 imagine the enormous popularity of the Washington

16 Redskins here *in* this particular marketplace. That's

17 true across the country. We are a nation of sports

18 fans.

19 And *in* terms of the things that are

20 delivered via distant independents, it's very

21 important to the cable operator because of that

22 uniqueness and because of the originality. The fact

23 that sports is always first run. We don't look at

24 replays of Washington Redskin games, even though we

25 might like to after Monday night, or Braves baseball,

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1 or Cubs baseball, or Mats baseball, or the Atlanta

2 Hawks.

3 There is a great deal of loyalty that goes

4 with that viewership, and it's not just in the

5 marketplace. The Atlanta Braves, with their Tomahawk

6 this year, you see Tomahawk people in every stadium

7 throughout the country,

8 I think that this week the Atlanta Braves

9 are playing the Cincinnati Reds, and I've seen more

10 Tomahawk things, which is the insignia of the Atlanta

11 Braves, than I've seen insignias for Cincinnati right

12 in Cincinnati's home stadium. So I think that the

13 impact that distant signal viewing, particularly in

14 the sports, is very apparent and very important to the

15 cable operator.

16 CHAIRMAN AGUERO: What about in 1989 when

17 they finished in last place?

18 THE WITNESS: Well, even in last place,

19 remember, sir, that they were -- they were playing

20 National League Baseball. And while they may not have

21 been in a pennant race, certainly the teams that they

22 were playing, the San Francisco Giants who won that

23 division that year, and they are in the same division

24 with the San Francisco Giants so I think they played

25 12 or 14 games with them that year. They played the

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1 same number of games against Cincinnati and Houston

2 and the Los Angeles Dodgers and San Diego.

3 So you're talking about National League

4 Baseball. You're not just talking about Atlanta

5 Braves baseball. It's wonderful for Ted Turner and

6 for his people when the Atlanta Braves are doing well.

7 But to the other people out there, they're always

8 playing somebody else, and there are a lot of Reds and

9 Mets and Philadelphia Philly fans, and there are --

10 this is a delivery system, not just for the Atlanta

11 Braves but for all the National League.

12 BY MR. GARRETT:

13 Q We have touched upon this a little bit

14 already, Mr. Wussler, but page -- top of page 3 of

15 your testimony you talk about how -- why sports

16 programs are critically important to the cable

17 industry's principal objective. Can you explain what

18 you meant by that?

19 A Well, the principal objective of cable

20 penetration is to try to sign up as many homes as is

21 possible and to keep them. There is something in the

22 industry called churn; that's when somebody calls up,

23 orders cable, looks at it for a while, and decides

24 to -- that they want to disconnect. There is a great

25 deal of churn with premium channels -- HBO, Showtime,

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1 Disney. The churn factor in those -- with those

2 channels is 100 percent. You turn over your entire

3 universe once a year.

4 In the rest of the industry, the churn

5 factor is about 30 percent. Far more people have the

6 ability to get cable than actually subscribe to cable.

7 Homes pass by. Presently, there are about 60 million

8 homes that subscribe to cable. There are probably

9 another 25 million dwellings that could subscribe to

10 cable if they wanted to. Most of those people have

11 at one time or another and for whatever reason, lack

12 of sufficient income, or whatever the case may be,

13 have decided not to carry it on.

14 Sports is utilized, along with first-run

15 movies and some other programming, as a predominant

16 means to promote your services to the cable retail

17 industry. So sports, whether it's the Atlanta Braves

18 or the Chicago Cubs or the New York Mets, is extremely

19 important to the cable operator. It's something that

20 is highly promotable.

21 You can -- you could promote the heck out

22 of a movie, but the movie is going to go away

23 tomorrow. Once you run it, maybe you can run it again

24 next month or next year. But when you have a schedule

25 of games, you can promote that product, and those 25

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1 players or those 12 players, day after day, night

2 after night, and it becomes a very valuable commodity.

3 You can also tie it together with

4 merchandising -- hats, gloves, T-shirts, and the kinds

5 of thing that America has shown itself very

6 susceptible to.

7 CHAIRMAN AGUERO: Is WTBS covers only

8 National League games or American League games too?

9 THE WITNESS: WTBS, for the last 15 years,

10 has only carried --

11 CHAIRMAN AGUERO: The National League.

12 THE WITNESS: -- the National League games

13 through their ownership of the Atlanta Braves.

14 CHAIRMAN AGUERO: I see. Thank you.

15 BY MR. GAPOFTT:

16 Q Mr. Wussler, back to your prepared

17 statement here on page 3, second full paragraph. You

18 indicate there that the marketplace value of a program

19 package can be seen in the amounts paid to acquire

20 that programming from independent sources. Do you see

21 that reference there?

22 A Yes, I do.

23 Q Any information on the amounts that WTBS'

24 or Turner Broadcasting paid in 1989 for the syndicated

25 packages versus what they paid for sports packages?

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1 A Yes. Sports was much, more costly. In

2 1989, you could -- you could obtain the six, seventh,

3 or 50th run of the Beverly Hillbillies, Petticoat

4 Junction. Those things were available for probably

5 something under \$5,000 per_half_hour, and that would

6 give you either unlimited or a very high number of

7 runs that you could repeat that program over a period

a of time.

9 Motion pictures were more expensive.

10 There is an example in my testimony of a Columbia

11 Pictures package of \$10 million of rights paid for

12 about 1,000 features. Those 1,000 features would

13 probably over the course of the seven to 10 years that

14 the license period extended, those pictures would be

15 run probably seven or eight times, depending upon the

16 structure of the negotiation.

17 So it would probably give you -- if you

18 had 1,000 movies, each movie was two hours, that's

19 2,000 hours. And if you ran all of them seven hours

20 -- seven times, that would mean you have about 14,000

21 hours of programming over a period of time.

22 At the same time, WTBS closed an

23 arrangement with the National Basketball Association

24 for four years of about 75 basketball games for \$275

25 million, far, far in excess of what was paid for a

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very valuable film library.

2 CHAIRMAN AGUERO: And did you have -- if

3 you bought 10,000 -- I mean, 1,000 films for \$10

4 million, the average per film would be around \$10,000,

5 no?

7 THE WITNESS: That's correct.

CHAIRMAN AGUERO: And then the per hour?

If you have the film 14 hours in seven years, then you

9 have to -- to find the cost per film per hour, you

10 have to multiply \$10,000 for 14 hours.

11 THE WITNESS: No, you divide.

12 CHAIRMAN AGUERO: I mean, divide. I'm

13 sorry. You divide, yes. And then that will give you

14 exactly around how much per hour?

15 THE WITNESS: Probably --

16 CHAIRMAN AGUERO: \$700 per hour?

17 THE WITNESS: A few hundred dollars per

18 hour.

19 CHAIRMAN AGUERO: \$700 per hour, yes. Per

20 hour.

21 THE WITNESS: Per hour.

22 CHAIRMAN AGUERO: Per film around \$1,500.

23 THE WITNESS: \$1,400 to about \$2,000.

24 CHAIRMAN AGUERO: And then the basketball,

25 of course, you have \$275 million for 350 games.

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1 THE WITNESS: That's correct.

2 CHAIRMAN AGUERO: The average per game is

3 around --

4 THE WITNESS: Two hours.

5 CHAIRMAN AGUERO: Honey, \$900,000.

6 THE WITNESS: Right.

7 CHAIRMAN AGUERO: Do you make the

8 calculation how much per hour on basketball because

9 basketball sometimes they last three --

10 THE WITNESS: Two hours.

11 CHAIRMAN AGUERO: Depends upon the

12 overtime and so on.

13 THE WITNESS: Basketball tends to average

14 about two and half -- two hours and 20 minutes. You

15 get a little chance to do a little pre-game at the top

16 and a little pre-game at the bottom. But the per-hour

17 cost for the basketball is far, far, far exceeds the

18 per-hour for the --

19 CHAIRMAN AGUERO: Can you tell me -- for

20 this tribunal the value, the comparison between the

21 price of a film and the price on the basketball?

22 THE WITNESS: No, I --

23 CHAIRMAN AGUERO: How we are supposed to

24 weight your -- the cost of your -- your comparison?

25 THE WITNESS: Our example in my testimony

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1 indicates that WTBS for those two packages paid 30

2 times more for the sports package than they paid for

3 the motion picture package, and that was a good motion

4 picture package. There are lots of motion picture

5 packages you can buy for considerably less than that

6 price and not too many movie packages that you could

7 buy for more. A few, but not too many.

8 CHAIRMAN AGUERO: The weight we should

9 give the comparison between the price for the movie

10 -- per hour, per show in comparison with the

11 basketball game or baseball game or some -- some other

12

13 THE WITNESS: 30 to 1.

14 CHAIRMAN AGUERO: What?

15 THE WITNESS: 30 to 1.

16 CHAIRMAN AGUERO: How do we weight this

17 in our -- in our decision?

18 THE WITNESS: Well, that's -- that's a

19 very good question. And, fortunately, I'm not in your

20 shoes to have to do that. I think it goes back to --

21 CHAIRMAN AGUERO: Do you like to switch,

22 sir?

23 (Laughter.)

24 THE WITNESS: I'm not sure you'd like to

25 be in my shoes these days.

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(Laughter.)

I think it goes back to my opening statement that I think the -- the 4 to 1 relationship of programming to sports where sports has gotten roughly 70 or 75 -- programming has gotten 75 percent of the pie and sports has gotten 15 or 16 percent of the pie, I -- I think the numbers are considerably off base. I've always felt that those numbers were considerably off base.

It's like USA Today. Let's talk about something that's independent, has nothing to do directly with what we're talking about here today. But you -- statistics have shown that the reason people -- the first reason that people buy USA Today is because of their sports pages. And those sports pages tend to help to promote the kind of programming that we're talking about here.

USA Today has a lifestyle section that is important to USA Today, but it does not carry the weight that its sports section has. I think that if you look around at our lives today, sports plays a very large important part. That's why local newscasts have a five- or a seven-minute sports section, usually with some guy who is a little bit off the wall or something. But sports plays a very large part.

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an advertising income standpoint, it probably represented 30 to 35 percent of the entire advertising combine that it -- was brought in by --

COMMISSIONER ARGETSINGER: So you think that's a reasonable ratio to look at?

THE WITNESS: That what is a reasonable ratio?

COMMISSIONER ARGETSINGER: The 30 percent to 10 percent or nine percent?

THE WITNESS: Well, I think that it's certainly a step in the right direction.

MR. GARRETT: Do you need me for anything?

(Laughter.)

CHAIRMAN AGUERO: Well, will you please, Mr. Garrett, the counsel here have a question for Mr. Wussler.

MR. GARRETT: I was just going to step outside for a moment and let you --

(Laughter.)

COMMISSIONER DAUB: I do have one.

Mr. Wussler, if the majority of -- of the program directors within cable companies were women executives, would the emphasis on sports be as great?

THE WITNESS: I'm not certain that it would be as great, but it would be very high. A look

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And in terms of looking at the division of wealthier, I think that sports deserves more than it has been getting because of the kind of effort and the kind of money that Turner Broadcasting, the Tribune Company, and the other people who carry distant independents have gone out and have acquired these things.

COMMISSIONER ARGETSINGER: And, of course, sports has the worst survey by looking at it another way. Assuming sports amounts for, let's say, 10 percent of the viewing hours, how would you weight it if you --

THE WITNESS: Well, I think you have to be very careful there. When I was running CBS Sports, and when I was running TBS Sports, we always tried to have about nine percent of our schedule to do sports.

But I think the impact on your advertisers, on your viewers, is far, far greater than nine percent of the whole because you're putting things on in prime viewing hours, either 7:30 to 11:00 on a week night or 1:00 to 5:00 on a Saturday afternoon.

Look at my -- my -- at my testimony in here about advertisers. While sports may have been eight and a half percent of the schedule of WTBS, from

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at the demographics of sports viewing on television shows that most events get at least 40 percent. You have to remember that women control the set in most households, and more and more single and single parented homes with women as head of household look at a great deal of sports.

I'm not going to try and sit here today and convince you that it's greater than the average male 18 to 34 or 18 to 49, but the amount of sports viewing done by women is extremely high.

COMMISSIONER DAUB: Now, if you would turn the picture around, the subscribers, just -- we happen to have more male executives who control, or at least design these programs. But you happen to have more women subscribers.

THE WITNESS: That is correct. And that's why we have things like Lifetime and why we have other forms of information. That's why cable is the -- the medium of choice. You're not just limited to ESPN or WTBS or WGN, but there are a number of things. It's a tough world out there when you have all those -- all those things are competing for the viewer's eyes, and they are competing for the advertiser.

COMMISSIONER DAUB: And I'm sure those cable operators are mindful of the fact that the women

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1 make up two-thirds of the consumption of the goods

2 that the country produces.

3 THE WITNESS: Yes.

4 COMMISSIONER DAUB: Thank you.

5 COMMISSIONER ARGETSINGER: Along those

6 lines, I suppose whether it's a male or a female

7 program executive, they don't program what -- they

8 don't program what they like. They program, I would

9 assume, what sells. Is that correct?

10 THE WITNESS: That's correct. You can

11 program what you like for a day or two.

12 COMMISSIONER ARGETSINGER: And then you're

13 out of business.

14 THE WITNESS: That's correct.

15 CHAIRMAN AGUERO: Mr. Cassler, our

16 counsel?

17 MR. CASSLER: Mr. Wussler, when you were

18 acquiring programs for TBS, to what extent did the

19 existence of cable compulsory royalties, the knowledge

20 that the program supplier, whether of movies or of

21 sports, was eventually going to get money from the

22 tribunal, to what extent did that knowledge enter into

23 your negotiations?

24 THE WITNESS: Not a great deal. It was

25 there. You must understand that we were approached

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1 by a salesman. A salesman was given a territory --

2 the-southeast or the east or -- or the top 20 markets,

3 but he was given a territory. And because these

4 proceedings take some time, and because of the fact

5 that during the 80's the distribution of the money was

6 sometimes several years in arrears, the salesman was

7 less interested in that.

8 As a matter of fact, I'll tell you a

9 little funny insight I had in dealing with some of the

10 large suppliers of programming out in Hollywood during

11 the mid 80's, before the time period that we're

12 talking about right now.

13 When the money started to come in, they

14 didn't know what to do with it. They didn't know how

15 to allocate the money, whether to allocate it back to

16 the program producers, whether to allocate it to

17 overhead, but there a great deal of concern on the

18 part of many of these providers of programming as to

19 what to do with the money, what to actually -- how to

20 account for it because it was a new stream of revenue,

21 and you know that new streams of revenue are not

22 always easy to handle.

23 MR. CASSLER: So you weren't able to offer

24 them less because you knew they were getting money

25 from other sources?

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1 THE WITNESS: We certainly attempted to.

2 We certainly used that as part of our negotiation.

3 And as the copyright fund grew, and as more and more

4 of the suppliers became aware of and actually began

5 to see dollars streaming into corporate headquarters

6 in New York or Hollywood, it became more of a factor,

7 but that was over a good five- or a six-year period.

8 Ted and I were out front on that one,

9 going all the way back to working with Jack Valetti

10 and the people at the NPAA, and the other people at

11 the NAB, in the early 80's, trying to explain the fact

12 that this was going to be some significant dollars.

13 And certainly as we look at where it is today, I think

14 it's over \$200 million. It is a significant revenue

15 stream now. It wasn't always that way.

16 CHAIRMAN AGUERO: Mr. Garrett?

17 MR. GARRETT: I forgot what I was going

18 to say.

19 (Laughter.)

20 Actually, I think we've almost covered

21 everything here, Mr. Chairman. Just a couple of

22 things to make the record clear.

23 BY MR. GARRETT:

24 Q Mr. Wussler, you mentioned the Columbia

25 movie package that TBS negotiated. That was

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1 negotiated in December of 1989, correct?

2 A A couple of months. The negotiations were

3 started prior to my departure, and they were completed

4 a few months after I -- I left.

5 Q In 1989?

6 A That is correct.

7 Q And the NBA package that you referred to

8 also was negotiated in 1989?

9 A Yes. I was in -- I was involved with

10 those negotiations in the summer of 1989.

11 Q And I think as you explained to the

12 Chairman here, the number of hours of programming that

13 that Columbia package occupied over the life of -- of

14 the contract was significantly greater than the number

15 of hours occupied by --

16 A Oh, by far. We're talking about 1,000

17 films with somewhere between five and 10 runs for

18 every film. You really start to get up into some very

19 high numbers. The basketball package was very

20 discrete. It was 75 games a year for four years.

21 Q And I assume that, referring back again

22 to the MPAA concept of viewing that you mentioned at

23 the outset, that the amount of viewing hours

24 attributable to that Columbia TV package over the life

25 of the package -- the amount of viewing hours

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1 attributable to the MPAA concept?

2 A Yes.

3 Q And notwithstanding that, the price

4 differential between the two was some 30 times higher

5 for the NBA package?

6 A That is correct.

7 Q Why would rational business people such

8 as those at WTBS spend 30 times the amount for a

9 program that's going to generate fewer hours and fewer

10 viewing hours?

11 A The. NBA and its promotional ability, its

12 uniqueness, was extremely important to us. We wanted

13 to -- to acquire that package. We did not want it to

14 go to someone else. We felt that our cable operators

15 would be enhanced by it and that the retail viewer

16 would be.

17 Prior to the 1989 package, we had acquired

18 it in increasing rates, \$9 million, \$11 million, \$23

19 million, \$27 million, over a four-year period in the

20 mid 1980's for WTBS, and it single-handedly helped us

21 gain great penetration in the northeast where WTBS had

22 very few viewers, had very **few** households was -- were

23 available.

24 So we found that, whether it was Braves

25 or Hawks or college football, that these sporting

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1 A Yes.

2 Q Could you tell us what you meant by that?

3 A Yes. I think that there's far- more

4 syndicated programming and movies that are on 24 hours

5 a day on cable than there is sports. Sports is a

6 limited thing, particularly first-run sports.

7 If you -- let's get away from distant

8 signals for a moment just to make a comparison. If

9 you take a look at ESPN, ESPN for the first five years

10 'of its existence offered Australian football, it

11 offered stock car races, it offered a number of things

12 that were not major league. It's only in the last few

13 years that ESPN has added what I think we'll call

14 major league sports. Sports is an extremely valuable

15 commodity.

16 Q Are you aware that ESPN, that was part of

17 its strategy, to use those -- what you would call, I

18 guess, minor sports?

19 A It -- that was an economic strategy, not

20 a programming strategy. I'm quite familiar with how

21 -- how ESPN was structured, and they knew that, just

22 like CNN could get something around a 1.0 rating or

23 less, that if they could control their costs and do

24 a .8 or a .9 rating, that they could do quite well.

25 It was a second half of the 80's strategy

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1 events were extremely valuable to the viability and

2 popularity of the system. Not only can you collect

3 based on the hours that the event is on, but it

4 affects your lead in, it affects your lead out, the

5 program that is on immediately before. It affects the

6 programming that is on immediately after.

7 And, obviously, when you have teams that

8 are doing well, you're going to do better. But

9 National League -- National Basketball Association

10 basketball is major league, and National League

11 Baseball is as good as you're going to get.

12 Q That includes the Chicago Cubs too,

13 doesn't it?

14 A Absolutely, yes.

15 MR. GARRETT: I have no further questions.

16 Thank you, Mr. Wussler.

17 CHAIRMAN AGUERO: Mr. Lane?

18 MR. LANE: Thank you.

19 CROSS EXAMINATION

20 BY MR. LANE:

21 Q Mr. Wussler, would you turn to page 2 of

22 your testimony, please. At the bottom of the page,

23 you refer to the relatively limited availability of

24 sports programming. Do you see that? The next-to-

25 the-last line on the bottom of the page.

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1 that forced them into NFL football and baseball and

2 other things.

3 Q When you were talking about relatively

4 limited availability, did you have in mind ,the

5 regional sports networks that make major league sports

6 available --

7 A Well, certainly --

8 Q -- to cable subscribers?

9 Certainly, regional sports networks have

10 become commonplace. They're not doing, economically,

11 terribly well across the country, but they are a

12 reality, pretty much now, nationwide and they are

13 there. They have grown somewhat substantially over

14 the last five years, but I think the jury is still out

15 on where regional sports goes.

16 Q Would you turn to page 3 of your

17 testimony, please? The NBA package that you were

18 discussing in on TNT, is it not?

19 A' That is correct.

20 Q And you **are aware**, are you not, that TNT

21 programming is not part of this proceeding here?

22 A Of course.

23 Q Now --

24 A When the arrangement was made, there was

25 a question as to whether it would be televised on TBS

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or on TNT. The understanding with the National
Basketball Association going back to 1987 or 1988 was
that if TNT crossed a magic line of 30 million
subscribers, Turner Broadcasting would have the right
to move the package from one channel to another.
When we purchased the rights, we were
buying it for Turner Broadcasting, not necessarily for
either TBS or TNT.
Q Now, at that time, what was the ownership
of Turner Broadcasting? Was it owned solely by Ted
Turner?
A No. Are you talking about the summer of
1989?
Q Yes. When --
A The summer of 1989, Ted Turner owned
approximately 60 percent, and a group of cable
operators owned approximately 40 percent.
Q And these cable operators were among the
largest multiple system operators in the country, were
they not?
A That is correct.
Q And they had an economic interest, did
they not, in assuring that Turner Broadcasting, in all
its various entities, did well, did they not?
A They had a -- an economic interest to see

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that cable programming, in general, succeeded so that
their individual local systems would do better.
Q But they also had an economic interest in
Turner Broadcasting, did they not?
A Secondly, yes.
Q And how many of these MSC's, to your
knowledge, put TNT on their systems?
A I would say most of them agreed that as
contracts came up, and as channel availability opened
up, that they would put TNT on their system.
Q When -- was the Columbia Pictures package
that you discuss on page 3 of your testimony the only
syndicated product that TNT -- or, excuse me, that
Turner Broadcasting bought for use in 1989?
A No. There were numerous other things that
were acquired.
Q Now, was this -- you say this is the
largest package. Was this larger than the purchase
of the MGM-UA library?
A No. It was the largest package available
in 1989.
Q But it wasn't the largest purchase that
TBS had ever made.
A No.
Q And --

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A This is not a purchase. This is a license
agreement.
Q I'm sorry.
A You're referring to the MGM-United Artists
purchase of \$2.2 billion that was done in 1985 and
1986. That was a purchase.
Q But those are movies that are broadcast
on TBS and TNT from the MGM-UA library.
A And are also syndicated.
Q And they're syndicated. And the Columbia
Pictures would also be broadcast on TBS and TNT, would
they not?
A That is correct.
MR. LANE: Now, Mr. Chairman, at this
time, I'd like to -- I'm sorry.
CHAIRMAN AGUERO: Can anyone brief me
here? When Turner bought '85, '86, MGM and United
Artists, he paid \$2 billion. Was it for land, the
equipment, for the library --
THE WITNESS: Yes.
CHAIRMAN AGUERO: -- for everything?
THE WITNESS: It was \$2.2 million, sir.
MR. LANE: Billion.
THE WITNESS: For an -- for a Hollywood
motion picture studio and library. A laboratory, real

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estate, 74 acres in Culver City, a sound effects
department, a film department, and a number of motion
pictures that were in progress that were in the
process of being made.
CHAIRMAN AGUERO: Did he kept everything
for himself or did he --
THE WITNESS: No. Over the course of 53
weeks, everything except the library of 3,700 titles
was sold for about \$700 million. The library, the
investment in the library, was \$1.5 billion.
CHAIRMAN AGUERO: For the 3,000 --
THE WITNESS: That is correct.
CHAIRMAN AGUERO: Thank you very much.
Mr. Lane?
MR. LANE: Thank you, Mr. Chairman. Mr.
Chairman, at this time, I'd like to introduce some
pages from the 1989 Turner Broadcasting System 10K as
Program Supplier's Exhibit 23-X.
(Whereupon, the above-referred
to document was marked as Exhibit
No. 23-X for identification.)
BY MR. LANE:
Q Mr. Wussler, I have the entire 10K, if
there are any other pages, but I'm just going to be
addressing these.

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*COSTS OF BROADCAST RIGHTS
COMPARISON: 1983 AND 1989*

YEAR	NATIONWIDE		NBA
	INDEPENDENTS	AFFILIATES	
1983	\$1,508,700	\$407,400	\$5,500,000
1989	56,371,972	\$2,228,904	\$27,000,000
% CHANGE	422.35%	548.81%	490.91%

SOURCES: 1984 AND 1990 NAB TELEVISION FINANCIAL REPORTS;
TESTIMONY OF DAVID STERN

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1,000 films. On here, we have a number of \$22,150,000. The 140 episodes costs \$12 million, no?

THE WITNESS: I believe it was something

I believe that something like that is correct, sir.

BY MR. LANE:

• Where did you get the \$10 million figure?

A That was the number that was discussed prior to my departure in August of 1989.

Q And was that for the same package?

A I -- I have no idea. I believe it was for at least a similar package. The package may have been upgraded. I don't know that.

Q I'd like you to turn to the next page of Exhibit 23-X, please, which is page 35 of the 10K. Now, do you see in the heading "Business Environment Programming," that's the section I'm going to be discussing. Have you had a chance to look at that?

A No.

Q Would you -- would you just take a moment, please, and read through that?

MR. GARRETT: I'm sorry. What section are you directing his attention to?

MR. LANE: It's called "Business Environment Programming."

MR. GARRETT: All three paragraphs?

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I'd like you to refer, please, to the second page, which is page 8 of the 10K. Do you have that?

A Yes.

Q Do you see in the third paragraph on that page or the second paragraph under the heading "Programming"?

A Yes.

Q Is that the same package that you were discussing in your testimony?

A I believe it is, and I think that the discrepancy on the -- on the dollars has to do with the 140 episodes of one television series. I'm not certain as to what television series that is. This was decided long after my departure.

Q So that would suggest, according to what -- your surmise that the one series, by itself, was worth \$12.5 million?

A I believe it was a very valuable series. I have a feeling that it was something like Dallas, or something of that nature. I'm not certain as to what it was.

Q Now --

CHAIRMAN AGUERO: Mr. Wussler, you say the -- the -- in your testimony, you have \$10 million the

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MR. LANE: Yes.

THE WITNESS: Yes, sir. What is your question?

BY MR. LANE:

Okay. Now, the second paragraph, that refers, does it not, to the NBA rights that you have talked about in your testimony?

A I think that we're in sync on the numbers.

Q And one of the things I believe you said about sports was that it was original unique programming. Is that correct?

A That is correct.

Q Now, in these -- in the third paragraph they talk about some original movies, do they not, that were being produced for TNT in the same time period?

A In 1989, the company began to produce two-hour and four-hour made-for-television movies and mini-series.

Q Right. And in 1990, according to this, they planned 24 of those original movies, did they not?

A They planned 24. I believe they completed 14 or 15.

Q But the estimated commitment that they

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were willing to spend on those 24 movies was \$75 million according to this, was it not?

A The -- the plan was to spend \$2.5 to \$3 million per motion picture.

Q Now, the \$75 million for, let's just -- if we can just talk about the \$75 million for 24 movies, just so we can stick with the numbers on this page, if you'll accept that, that compares, does it not, to 80 basketball games which, if we divide the \$275 million, is about \$68 million a year, is it not?

A No. I -- I think you're heading down a wrong road here. First of all, we're talking about, by and large, programming that is on distantly -- distant independent signals.

Q Right. Were the basketball games going to be on distant independent signals for the \$275?

A We didn't know. There was --

Q But were they? Have they been?

A They have been.

Q For the \$275?

A For the \$275, they had been.

Q For the period 1990 to 1994, were any of those games on WTBS?

A No, they have not.

Q Okay. And that's the period that covers

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Q But the fact of the matter is the games have been, and are being, shown on TNT, correct?

A That's correct.

Q And the movies are being produced and have been shown on TNT and are going to be shown on --

A That is correct. They are on TNT. Then they go into syndication. And at some point, like other syndicated programming, they will run on TBS.

Q And the price paid for -- the price that they expected -- the commitment that they were willing to make for 1990 of \$75 million was greater than the commitment that they made for 1990 for basketball games, was it not?

A I'm --

Q Based on this page,

A Based on this page, your statement is correct.

Q And that's the 10K that they filed with the Securities and Exchange Commission, is it not?

A That's what the document --

Q Right.

A -- says at the beginning.

Q And when you were in the President and CEO, or whatever you were at TBS, was it your understanding that they carefully filled out their

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the \$275.

A That is correct.

Q So when you say that I may be going down the wrong road, it's clear the basketball that you've been discussing is down that same road, is it not? It's on TNT?

A No, because it was purchased by Turner Broadcasting for utilization on either TBS or TNT, with the knowledge that if the games were to appear on TBS -- on TNT, Atlanta Hawk games would be on TBS.

Q Well, are you saying that there was an extremely low expectation that TNT would not carry these games during the four years?

A It was a question as to where those games would -- would play. Whether they would be on TNT or TBS.

Q All right.

A And that was to be agreed upon mutually by Turner Broadcasting and the National Basketball Association. I believe it's reviewed after each season. I have been gone from there so I don't know what the precise handling of that has been. I do know that the games are going to be on TNT this year because in my role as an owner of an NBA franchise I am aware of that.

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10K's and made sure everything was true and correct?

A Yes, they did.

Q Now, the \$75 million was a commitment for 24 programs, 24 movies, was it not?

A There was a commitment of \$3 million per motion picture.

Q And the 24 programs compares to 80 basketball games that were shown -- that were shown or -- yes, were shown in 1990 on TNT, does it not?

A But those movies can be played 50 or 100 times. You can only play the basketball game once.

Q And is that because the movies have enduring value?

A Most movies do. Some don't.

Q Now, the sentence in the -- the first sentence in the third paragraph states, "TNT has been increasingly successful as measured by improved ratings with the production of its original made-for-cable movies." Do you see that?

A Yes, I do.

Q And was that part of the strategy for improving the penetration of TNT?

A Mr. Turner's strategy was to try to put on a special event a month. That would acquire a TV guide or a TV guide type of listing cover photograph

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1 for his service.

2 Q Okay. I'd like you to turn to page 4 of

3 your testimony, please. Now, you were -- were you --

4 when did you begin with WTBS or Turner Broadcasting?

5 A 1980.

6 Q And were you -- you were not there then

7 in 1970. Is that correct?

8 A No. I was not there in 1970.

9 Q Okay. Now, were you aware that, in

10 addition to buying sports programming, that Turner

U. also bought large blocks of syndicated programs and

12 movies in the early 70's?

13 A Oh, yes. I'm fully aware of that.

14 Q And that -- the same could be said about

15 his purchases of those blocks of programs as you've

16 stated here about purchasing the Braves programming,

17 could it not?

18 A I don't follow your question.

19 Q Well, you say that he recognized early

20 that sports programming would be the key -- be key to

21 the success of WTBS as a superstation, and I'm asking

22 you if the same thing could be said about his

23 purchases of large blocks of movies and syndicated

24 product in the early 70's.

25 A Ted Turner is a good programmer. Ha

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1 understands the mix of syndication, movies, and sports

2 into a good mix of what people are going to watch.

3 Q The last sentence of your testimony, you

4 -- have you just had a chance to look at that?

5 A The Turner ownership of the Braves --

6 Q No. The last -- the very last sentence.

7 A Yes.

8 Q And this programming, in that sentence,

9 refers to the Braves baseball games, does it not?

10 A That's correct.

11 Q And what would the cost be considerably

12 less than? I don't quite understand what you mean on

13

14 A On a per half hour or a per hour basis?

15 Q But considerably less than what? What

16 other --

17 MR. GARRETT: I think --

18 MR. LANE: I'm sorry.

19 MR. GARRETT: I think he was trying to

20 finish the answer.

21 MR. LANE: I'm sorry.

22 THE WITNESS: Considerably less than what

23 you would have to spend for an equal number of half

24 hours or hours of syndicated programming that probably

25 wouldn't get you the attention, generate the press,

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1 or be as unique as the sports programming.

2 BY MR. LANE:

3 Q But at least in this case you're saying

4 that Turner bought sports programming at a cost

5 considerably less than he could have bought syndicated

6 products?

7 A Ted's initial thought on acquiring the

8 Braves and the Hawks was that that would help him

9 program the station better for lower cost over the

10 long haul.

11 MR. LANE: Those are all the questions I

12 have, Mr. Chairman.

13 CHAIRMAN AGUERO: Thank you, Mr. Lane.

14 Koenigsberg? Music?

15 MR. KOENIGSBERG: Thank you, Mr. Chairman.

16 We have no questions of this witness.

17 CHAIRMAN AGUERO: You don't have

18 questions.

19 NAB?

20 MR. STEWART: Mr. Chairman, might I ask

21 your indulgence for a brief break before I answer your

22 question.

23 CHAIRMAN AGUERO: A five-minute break?

24 Excellent. Thank you.

25 (Off the record briefly for a break.)

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1 CHAIRMAN AGUERO: NAB?

2 CROSS EXAMINATION

3 BY MR. STEWART:

4 Q Mr. Wussler, just a few questions.

5 A Sure.

6 Q When you were with WTBS, I believe you

7 testified before that WTBS had a concern for

8 programming the station in a way that would maximize

9 its appeal to cable subscribers across the country.

10 Is that right?

11 A We tried to be as broad as possible.

12 Q And that concern, I take it, was true with

13 respect to programs that WTBS produced itself as well

14 as the programs it acquired from other sources?

15 A That's correct.

16 Q Was it important to WTBS for all those

17 different kinds of programs to be able to offer

18 something to cable subscribers that they didn't have

19 access to from other sources?

20 A Yes. Mr. Turner was particularly pointed

21 with me about getting quality documentaries onto our

22 schedule.

23 MR. STEWART: I have no further questions.

24 Thank you.

25 CHAIRMAN AGUERO: Thank you, Mr. Stewart.

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Mr. Tom Olson from PBS?

MR. OLSON: Yes, sir, Mr. Chairman.

CHAIRMAN AGUIERO: Would you please?

MR. OLSON: I have a few questions. Thank you.

CROSS EXAMINATION

BY MR. OLSON:

Q Mr. Wussler, we spoke briefly before, but, for the record, I'm Tom Olson with the Public Television Claimant. Good afternoon.

Just to briefly follow up on a question that Mr. Stewart had raised. Was it Ted Turner's view that well produced documentaries could be important to at least a certain segment of the cable subscriber population?

A In the surveys that we did, in addition to sports being something that people looked for, people have always said that documentary -- good documentary programming is important. Ted wanted to see that that was done.

Q . Was it also your experience, both at your previous job at Turner and your current job, that having programming available at convenient times to people is of value?

A I come from the Ted Turner school of 24

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at 8:00 at night, it's going to come into the Los Angeles marketplace at 5:00 in the afternoon.

With ABC, CBS, and NBC, they repeat the programming to run 8:00 to 11:00 east coast, and then they repeat it later on to run it at the same time on the Pacific coast network.

Q Right. Mr. Wussler, are you familiar with the arrangement through, which a payment was made by the Turner Broadcasting System, or one of its subsidiaries, to the Major League Baseball Central Fund?

A Yes. I believe starting in the mid 80's, I would guess, I think it's 1985, a negotiation was conducted by the Office of the Commissioner in New York with the then-four superstations WTBS, WGN, WOR, and WPIX -- for the collection of some monies relative to games transmitted on superstations.

Q Do you recall the total amount that was paid by those four superstations for calendar year 1989?

A For 1989, I couldn't tell you the total amount. I would say that WTBS paid in probably about \$6 between \$6 and \$7 million for that understanding.

Q Let me direct your attention to a document

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hours a day. If you turn the dial on, you need to be there. The idea of programming less than 24 hours a day is not a good idea.

Q Let me just follow up briefly with that, Mr. Wussler. If -- is it correct that TNT will sometimes show one of its made-for-cable movies on several occasions to make it conveniently available for viewers?

A Well, there's a cost factor there. The cost of that programming is very expensive. And because of the nature of the programming being movies, and you want to catch east coast and west coast prime time, you tend to double run those movies. I think as I was leaving and, as I somewhat pay attention to it, I think that those first-run movies are run five times in the first week or in the first couple of weeks that they are available.

Q So Turner Broadcasting did perceive there to be value of having that -- those very same programs shown on several occasions within the course of a single week.

A Yes. And also remember that much of cable programming, unlike the networks, you have one feed. You don't have an east coast feed and a west coast feed. You have a feed. And if you feed something out

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that I think you may have seen before. It's PTV Exhibit 42-X, and it's certain pages from the same Turner Broadcasting 10K that Mr. Lane was previously discussing with you. Do you have a copy of that in front of you?

A Yes.

Q I wonder if you would just read the first sentence on page 16 of PTV 42-X, please.

A "In January 1985, an agreement was reached between ANLBC" -- that would be the Atlanta National League Baseball Club -- "and the Commissioner of Baseball relative to the nationwide television exposure afforded the broadcast games of Braves games on Superstation TBS."

Q Let me ask, does that refresh your recollection about the time when this particular arrangement was first created?

A Yes. As I had said five minutes ago, I thought it ~~was~~ started in the beginning -- in the middle of the 80's.

Q Right. I just wanted to pin that down.

A Yeah.

Q The time, in particular, was January '85.

A Right.

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Q So prior to that time there were no comparable payments made to the Commissioner of Baseball relative to the nationwide television exposure afforded to broadcast the Braves games?

A Those -- those games were televised through an understanding that WTBS was the official home broadcast -- held the home broadcast rights to those games, and then that **signal** was retransmitted by a common carrier.

Q Let me --

A Prior to 1985.

Q Right. Let me just make sure that the record is clear about the answer to my specific question. The payments that were made pursuant to the January 1985 agreement between, I guess, Ted Turner and Peter Ueberroth, there were no comparable payments made prior to 1985. Is that --

A That's correct.

Q Okay. Because I'm not sure that this has ever been laid out anywhere else in the record, I wonder if, Mr. Wussler, you could just briefly describe the way that WTBS works as both a local station and as a national superstation.

A WTBS

MR. GARRETT: I'm sorry. I'm not sure I

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other than Atlanta, are those commercials all national commercials?

A I would say in the main they are national commercials. Some regional advertiser may buy a national market because it's efficient for him.

CHAIRMAN AGUERO: If you have a local sponsor in the Atlanta Braves game, that local sponsor, that particular spot of -- should be seen only --

THE WITNESS: In Atlanta.

CHAIRMAN AGUERO: -- in Atlanta.

THE WITNESS: That's correct, sir.

CHAIRMAN AGUERO: Not in New York, of course, because you don't want to have --

THE WITNESS: Or a car dealership or a public utility, the gas company.

CHAIRMAN AGUERO: You advertise some records, buy this record, you know, of Tony Bennett or Nat King Cole, may be national advertising.

THE WITNESS: That would be seen both in Atlanta and nationwide.

CHAIRMAN AGUERO: Thank you.

BY MR. OLSON:

Q Roughly speaking, how much of Turner Broadcasting's advertising revenues for WTBS came from

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understand the question here, and I'm not sure exactly how it relates to the purpose of his direct testimony. I'm not sure if I have an objection. I just don't understand the question.

MR. OLSON: Well, let me lead you through some specific questions and maybe it'll be clearer for Mr. Garrett.

MR. GARRETT: Thank you.

BY MR. OLSON:

Q Is it correct, Mr. Wussler, that WTBS has a different broadcast feed for broadcast in the local Atlanta market as opposed to delivery to distant cable subscribers?

A There are certain differences on the commercial feed only. There are no differences with regard to programming.

Q What's -- by the commercial feed, you mean the commercial breaks in between the programming?

A There **are** approximately 10 minutes per hour of commercials. Some of those commercials are seen **in** the Atlanta marketplace and nationwide. Some commercials are only seen in Atlanta. And some commercials are only seen nationwide.

Q Well, looking to the commercial feed that goes out to the cable subscribers around the country

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local Atlanta advertising as opposed to regional or national advertising?

A Well, now you're going to go back into my memory.

MR. GARRETT: Excuse me. Are we dealing with a particular year in question here?

MR. OLSON: For 1989, to the extent that you have information about that year.

THE WITNESS: I would say that about for W -- we're talking about WTBS now.

BY MR. OLSON:

Q WTBS in particular, right.

A I would say that 10 to 20 percent -- 10 to 15 percent of the revenues came from the Atlanta marketplace, and 85 to 90 percent of the advertising revenue came from the national marketplace.

Q You mentioned in your direct testimony that you were familiar with the Turner -- a channel called Headline News Network.

A Very much so.

Q Does that network get what you would consider to be high ratings?

A It does okay. High ratings are relative. There are 40 cable channels out there that are distributed nationally. I haven't looked at a cable

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rating book lately. Generally speaking, Headline News
2 did half of whatever CNN did. If CNN did a .8,
3 Headline News would do a .4.
Q Did -- did you believe that Headline News
5 was valuable to cable operators?
A Of course. I did.
Q Where did the value of that channel come
a from?
A The value of that channel came from the
10 fact that we were able to produce a second 24-hour-a-
11 day channel with a different format, different than
12 CNN, for a -- for small incremental dollars.
Q Now, I'm talking about the value to cable
14 operators.
A It was a different style of news. It was
16 a short summary as a lower demographic.
Q And do you think that cable operators got
18 some value from knowing that they could offer their
19 subscribers a half-hour news update any time the
20 subscribers were interested to see it?
A Yes. They believed that the two news
22 channels, generally speaking alongside of each other,
23 one represented the long form, one represented the
24 short form.
Q You mentioned in response to some
25

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1 questions from Mr. Lane that in 1989 WTBS, or I guess
2 strictly speaking, Turner Broadcasting Systems, was
3 owned in part by certain cable systems. Is that
4 correct?
A That's correct.
Q Was it sometime in 1987 that a certain
6 number of cable systems made investments in Turner
7 Broadcasting?
A Cable operators came on board in the
10 spring of 1987.
Q Do you recall the names of any of those
12 cable operators?
A Yes. Telecommunications, Incorporated;
14 ATC; Comcast; Cable Vision. I believe there were nine
15 all total.
Q Were the cable companies, however many
17 there were that invested in TBS, in 1987, were they
18 all still on board in 1989?
A One or two of them may have dropped out,
20 but the consortium remained pretty much the same.
Q Do you remember which one or two might
22 have dropped out?
A I have a feeling that Cable Vision might
24 have dropped out, but I could not testify to that here
25 today.

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1 Q Is there anybody else that you think might
2 have dropped out?
A Not that I can recollect at this point in
4 time.
Q You discussed previously the package of
6 movies and I guess one TV series that was purchased'
7 or licensed by Turner from Columbia Pictures. Do you
8 recall that discussion?
A Yes.
Q Was Columbia Pictures aware during the
10 negotiations about that package that WTBS was a
11 superstation that was carried by a large number of
12 cable systems?
A Of course.
Q And did the price that Columbia paid
16 reflect that fact?
A I think it was a marketplace price.
Q And it was -- is it fair to say that it
19 was a far larger price than if WTBS had *been* available
20 only in the Atlanta market?
A .I can't really testify to that today. I
22 think that if somebody in Atlanta wanted that large
23 a package they probably would have paid a significant
24 sum of money. But no other station in Atlanta was
25 interested because of other commitments, either ABC,

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1 CBS, NBC, or FOX commitments. Atlanta, like most
2 markets, is a limited place. There are only certain
3 places you can go to sell a package.
Q I'm sorry. Is it your testimony that you
5 -- you're not sure whether WTBS paid more for this
6 package of movies and series?
A I would say that WTBS paid more.
MR. OLSON: I have nothing further, Mr.
9 Chairman.
CHAIRMAN AGUERO: Thank you, Mr. Olson.
Redirect?
MR. GARRETT: A couple of questions, Mr.
13 Chairman. Thank you.
REDIRECT EXAMINATION
BY MR. GARRETT:
Q Just following up on that last line of
17 questions, Mr. Wuseler, you indicated that the amount
18 paid for the Columbia package by Turner Broadcasting
19 was a marketplace price, correct?
A I believe that's the way business works.
Q Okay. Let me direct your attention for
22 a moment to the amounts that were paid by TBS in order
23 to carry National League baseball games, the Atlanta
24 Braves and other National League teams.
25 To what extent would you characterize that

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as a marketplace price? And to what extent do you feel compulsory license has the impact on that price?

A No. The -- the arrangements starting in 1985, as requested by the -- by prior counsel, through 1989 and exist today, that's a negotiation because baseball is not free to go and sell that package elsewhere. Only WTBS has the rights to the Braves games. Only WGN has the rights to the -- to the Cubs games and so on down the road.

And those were negotiations where the rights -- the station started out saying, just like pre-1985, "We don't owe you anything. We owe you zero." And baseball's attitude was, "We -- you owe us a lot.. And somewhere in the middle, a negotiated price was -- was worked out. So I could not call that a marketplace price because baseball couldn't take that package and go to a competing station with it.

Q To what extent did the existence of the compulsory license impact the --

A Considerably because that prior 1985 -- those were the rules that were applicable on the part of WTBS or any distant independent in taking baseball outside of the 75-mile home territory. It was done because of the compulsory license.

Q Had baseball not negotiated that deal,

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what would happen with the Braves games?

A They would have been carried by WTBS and by WGN and by the Mets with BOR.

Q Because of the compulsory license?

A Because of the compulsory license.

Q Okay. Let me focus for a moment on the -- some of the questions that Mr. Lane had asked of you. At the end of his cross examination, you were both talking about page 4 of your testimony at the end. I think the acquisition of the Braves, the Hawks, as well as some syndicated programs. Do you recall that?

A Yes.

Q Now, it is true that Turner Broadcasting purchased the Atlanta Braves sometime in the mid 1970's?

A '77, I believe.

Q Okay. And also purchased an interest in the Hawks, correct?

A Right after that.

Q Now, the -- why did Turner go out and purchase two sports franchises? Simply to reduce the cost of programming?

A Because they were valuable commodities within the Atlanta marketplace, because they were

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extremely valuable -- they were potentially extremely valuable commodities to put on cable and to put into other marketplaces, and because it represented very good programming value.

Q Would WTBS have enjoyed the success that it did absent the ability to program National League baseball?

A There are lots of independent television stations that run Andy of Mayberry or Petticoat Junction or Beverly Hillbillies. There are very few independent television stations that have Major League, effectively year-round, sports programming.

Q Let me just direct your attention for a moment to Program Suppliers Exhibit 23-X. Do you have that in front of you?

A Is that this one?

Q Yeah. That's the SEC filing.

A Yes.

Q Turn to the second page, which is actually page 8 of the filing. Do you have that?

A Yes.

Q The second paragraph there under programming refers to the --

A On November 3, 1989, paragraph?

Q Yes. You had mentioned in your testimony

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that the deal you had negotiated before it closed and before it had finally -- and before you finally left TBS was for approximately \$10 million, correct?

A That's correct.

And how many runs under that deal?

A As my recollection serves me, it was for 1,000 films, an average of seven runs each film.

Q All right. And this deal here as it was finally closed was for \$22 million, correct?

A That's what I gather. I gather this document -- I presume that this document is accurate.

Q And how many runs did --

A Seems to be considerably more runs. Sixteen times during two-year periods.

Q Okay.

So it would seem to be a -- considerably more runs than I had contemplated back in the summer several months before this.

Q All right. You mentioned that there's additional series here that has thrown in 140 episodes of one particular television series. Do you recall your testimony on that?

A Yes, I do.

Q You have no direct knowledge that the -- that particular series accounted for the difference

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1 between --

2 A No. No, I don't.

3 Q To what extent do the number of runs play
4 on the amount of the --

5 A Oh, considerable. I mean, if you -- if
6 you get twice as many runs or three times as many
7 runs, the -- the price that you pay is going to go up
a dramatically.

9 Q In response to the Chairman's questions
10 earlier during your direct, you had done a number of
11 calculations concerning the number of runs. Do you
12 -- that came with the Columbia Pictures deal. Do you
13 recall that?

14 A Right.

15 Q And those were all done on the basis of
16 eight as opposed -- seven or eight runs as opposed to
17 the 16?

18 A Prior to my departure, a -- most
19 syndication contracts, generally speaking, covered
20 seven runs, seven years. Not all, but many.

21 Q And how would the testimony that you gave
22 in response to the Chairman's questions concerning the
23 value placed on the program -- in other words, the
24 price paid on the programming -- and the amount the
25 programming was shown over the life of the contract

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1 called "Programming." Do you see that?

2 Now, as I understand it, Turner
3 Broadcasting paid the amounts here in order to acquire
4 certain movies, correct?

5 A Correct. They were paying \$3 million --
6 approximately \$3 million per original movie. The
7 commitment was to try to do up to 24. In the best --
8 to the best of my reasoning and the fact that / stay
9 in touch with those people, they were never able to
10 complete all 24.

11 Q All right. And what rights was TBS
12 acquiring for that \$3 million?

13 A For the \$3 million per film, they were
14 acquiring all rights.

15 Q Now, what does that --

16 A Domestic, TNT rights, syndication rights,
17 a great deal of ancillary rights, home video rights,
18 and, of course, the all-important international
19 marketplace right.

20 Q And when you acquired -- or when TBS
21 acquired the rights to the NBA games, what rights did
22 you acquire?

23 A One run on one network, no ability to
24 syndicate, no international, no home video.

25 Q All right. Thank you.

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2 A Well, obviously, the more runs you add,
3 the more the price comes down per run. If you have
4 100 runs, say, over a 10-year period, it's going to
5 cost you a lot less per run or per hour than it is if
6 you're -- you're only running it eight or 10 times
7 during a 10-year period.

8 Q All right. I guess it's fair to conclude,
9 is it not, that the -- the amount of hours and viewing
10 hours generated by this Columbia Television Pictures
11 deal was substantially greater than the amount of
12 hours or viewing hours generated by the deal with the
13 NBA, correct?

14 A Absolutely.

15 Q Let me just turn your attention to the
16 second -- the next page of Program'Suppliers Exhibit
17 23-X. It's page 35 of the SEC filing.

18 A Yes, I have it in front of me.

19 Q Okay. And again I'll direct your
20 attention to the same paragraphs that Counsel for MPAA
21 was focusing on in his cross examination. Do you have
22 those before you?

23 A Yes, I do.

24 Q And that's the programming under the
25 heading -- I'm sorry, the portions under the heading

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1 MR. GARRETT: That completes my redirect.

2 CHAIRMAN AGUERO: Thank you very much, Mr.
3 Wussler.

4 THE WITNESS: Thank you very much.

5 CHAIRMAN AGUERO: Okay. We will reconvene
6 tomorrow at 10:00 in the morning with Dr. Book, no?

7 MR. GARRETT: That's correct.

8 CHAIRMAN AGUERO: Okay. Thank you very
9 much.

10 MR. GARRETT: Thank you.

11 MR. OLSON: Thank you.

12 (Whereupon, the hearing in the above-
13 captioned matter was concluded at 2:47 p.m., to
14 reconvene the following morning at 10:00 a.m.)

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Before: MARIO P. ACUERO, CHAIRMAN

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I hereby certify that on Monday, February 12, 2018 I provided a true and correct copy of the Robert Wussler Direct Oral Testimony (JSC Written Direct Statement Vol. III) to the following:

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Signed: /s/ Michael E Kientzle